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REMARKS/ARGUMENTS

Claims 1 to 4, 6, 8 to 10, 13 to 15, and 18 to 21 are pending in this application. The rejection of claims 1 to 4, 10 to 13, 15, and 18 to 21 under 35 U.S.C. § 103(a) has been maintained. Claims 6, 8, and 14 are objected to because they depend from rejected base claims but would be otherwise allowable if rewritten in independent form. Claim 9 is allowed. All other previous rejections have been withdrawn. Applicants are herein amending claim 1.

Amendments to Claims

Applicants are herein amending claim 1 to remove the proviso with respect to Q. Applicants submit that the amendments to the claims do not introduce new matter and are fully supported by the specification and claim 1, as originally filed. Applicants request the Examiner to enter the amendment under 37 C.F.R. § 1.116(b) because the amendments to the claims present the rejected claims in better form for consideration on appeal.

Rejection under 35 U.S.C. § 103(a)

Claims 1 to 4, 10 to 11, 13, and 15 to 21 stand rejected under 35 U.S.C. § 103(a), as allegedly obvious in view of US-A-5,360,807. Applicants respectfully traverse the rejection because there is no motivation to modify the cited reference to achieve applicants' claimed invention, as US-A-5,360,807 is directed to antiallergic and antihistamine compounds whereas applicants' claimed novel compounds and methods of treatment employing novel and known compounds for the treatment of respiratory syncytial viral infections.

Applicants submit that it has not established in the office action that the claimed invention is *prima facie* obvious. To establish a proper *prima facie* rejection, the following elements must be shown:

- (1) the reference(s) is (are) available as prior art against the claimed invention;

- (2) the motivation (explicit or implicit) provided by the reference(s) that would have rendered the claimed invention obvious to one of ordinary skill in the art at the time of the invention;
- (3) a reasonable expectation of success;
- (4) the basis for concluding that the claimed invention would have been obvious to do, not merely obvious to try; and
- (5) the reference(s) teach(es) the claimed invention as a whole.

Applicants submit that elements 2, 3, 4 and 5 have not been established. Hence, a *prima facie* obviousness rejection is improper. *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1983).

In the office action, it is alleged that some of the compounds of the invention are structural homologues of the compounds disclosed in US-A-5,360,807. It is further alleged that a skilled artisan would be motivated to modify the reference to achieve the presently claimed invention because such compounds "would be expected to possess similar utilities." Applicants disagree that the cited reference and the claimed invention "possess similar utilities." US-A-5,360,807 discloses the use of its compounds in methods of treating warm-blooded animals suffering from *allergic diseases*, whereas the claimed invention is directed to compounds useful in methods for treating *respiratory syncytial viral infections*. Applicants submit that allergic diseases and respiratory syncytial viral infections are different:

An **allergy** is a state of hypersensitivity induced by exposure to a particular antigen (allergen) resulting in harmful immunologic reactions on subsequent exposures, the term is usually used to refer to hypersensitivity to an environmental antigen (atopic allergy or contact dermatitis) or to drug allergy. *On-line Medical Dictionary, Academic Medical Publishing & CancerWEB (enclosed)*

A **respiratory syncytial viral infection** is an infection (an invasion and multiplication of microorganisms in body tissues) caused by the RNA virus (a member of the Paramyxoviridae family). The virus is a major pathogen in the upper and lower respiratory tract in both infants and younger children. Respiratory syncytial virus manifestations include bronchiolitis, pneumonia and croup.

DOCKET NO.: JANS-0027 (JAB-1498)
Application No.: 10/030,202
Office Action Dated: March 15, 2004

PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116

*On-line Medical Dictionary, Academic Medical Publishing & CancerWEB
(enclosed)*

Furthermore, the Office Action does not establish a connection between the treatment of allergic diseases and the treatment of respiratory syncytial viral infections, a burden that must be carried by the Office not the applicant to establish *prima facie* obviousness, as incorrectly stated in the Office Action. It is respectfully submitted that a skilled artisan would have no expectation that the compounds of US-A-5,360,807 would be useful in methods of treating respiratory syncytial viral infections and thus would have no motivation to modify the reference, especially in a manner to achieve applicants' claimed method and compounds.

Accordingly, applicants respectfully request withdrawal of the rejection of claims 1 to 4, 10 to 11, 13, and 15 to 21 under 35 U.S.C. § 103(a) in view of US-A-5,360,807.

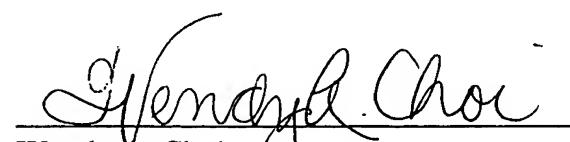
Conclusions

Applicants respectfully request:

- (1) entry of the amendments to the claims; and
- (2) reconsideration and withdrawal of the rejection of the claims based on the foregoing remarks and arguments, and allowance of claims 1 to 4, 6, 8 to 10, 13 to 15, and 18 to 21.

If the Examiner is of a contrary view, the Examiner is requested to contact the undersigned attorney at (215) 557-3861.

Date: May 27, 2004



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allergy

1. <immunology> A state of hypersensitivity induced by exposure to a particular antigen (allergen) resulting in harmful immunologic reactions on subsequent exposures, the term is usually used to refer to hypersensitivity to an environmental antigen (atopic allergy or contact dermatitis) or to drug allergy.

The original meaning, now obsolete, included all states of altered immunologic reactivity, immunity as well as hypersensitivity. Gell and Coombs used the term allergic reaction to mean any harmful immunologic reaction causing tissue injury.

2. <study> The medical specialty dealing with diagnosis and treatment of allergic disorders.

(18 Nov 1997)

Previous: [allergic salute](#), [allergin](#), [allergised](#), [allergist](#), [allergization](#), [allergosis](#)

Next: [allergy and immunology](#), [allergy desensitization](#), [allergy shots](#)

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RSV -->

respiratory syncytial virus

<virology> This RNA virus is a member of the Paramyxoviridae family and is a major pathogen in the upper and lower respiratory tract in both infants and younger children.

Respiratory syncytial virus manifestations include bronchiolitis, pneumonia and croup.

Acronym: RSV

(27 Sep 1997)

Previous: [respiratory region of tunica mucosa of nose](#), [respiratory scleroma](#), [respiratory sound](#), [respiratory sounds](#)
Next: [respiratory syncytial virus](#), [bovine](#), [respiratory syncytial viruses](#)

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infection

1. <[microbiology](#)> Invasion and multiplication of microorganisms in body tissues, which may be clinically unapparent or result in local cellular injury due to competitive metabolism, toxins, intracellular replication or antigen antibody response. The infection may remain localised, subclinical and temporary if the bodys defensive mechanisms are effective. A local infection may persist and spread by extension to become an acute, subacute or chronic clinical infection or disease state. A local infection may also become systemic when the microorganisms gain access to the lymphatic or vascular system.

2. An infectious disease.

(18 Nov 1997)

Previous: [infarct](#), [infarction](#), [infauna](#), [infaust](#), [infect](#), [infected](#), [infected abortion](#)

Next: [infection calculus](#), [infection control](#), [infection control](#), [dental](#)

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